

K.S.A. 44-551 grants appeal from preliminary hearings if it is alleged the administrative law judge has exceeded his or her jurisdiction in granting or denying benefits. K.S.A. 44-534a lists the following as being jurisdictional issues to be considered upon appeal from preliminary hearings: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice is given or claim timely made; (4) whether certain defenses apply. Absent the involvement of one of the above listed issues or a showing that the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested at the preliminary hearing, the Appeals Board does not have jurisdiction to consider a matter on an appeal from a preliminary hearing.

In this instance, claimant failed to appear at several scheduled medical examinations and respondent has requested a dismissal of this matter pursuant to K.S.A. 44-518. The Special Administrative Law Judge, in his Order, indicated he could find no provision in the statute granting a prejudicial dismissal of claimant's claim. While K.S.A. 44-518 does discuss dismissal of a proceeding it does not specifically discuss a prejudicial dismissal of a claim. The Special Administrative Law Judge has the right to grant or deny the above requested action. The issue contained herein is not listed in K.S.A. 44-534a and it has not been shown that the Special Administrative Law Judge exceeded his jurisdiction in denying respondent's motion. As such, the Appeals Board does not have jurisdiction over this interlocutory matter.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Special Administrative Law Judge William F. Morrissey dated January 2, 1996, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Seth G. Valerius, Topeka, Kansas  
Terry J. Malone, Dodge City, Kansas  
William F. Morrissey, Special Administrative Law Judge  
Philip S. Harness, Director